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State of Maine

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**STATE OF MAINE**
**ONE HUNDRED AND NINETEENTH LEGISLATURE**
**SECOND REGULAR SESSION**
**JOURNAL OF THE SENATE**

In Senate Chamber
Tuesday
March 28, 2000

Senate called to order by President Mark W. Lawrence of York County.

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Prayer by Reverend Holly Antolini of St. Marks Episcopal Church in Waterville.

**REVEREND ANTOLINI:** Good morning. Given the weather report, I feel as if I should be exhorting you to prepare your ark. But instead I will pray a prayer for sound government from our Book of Common Prayer. The Lord be with you. Let us pray.

Oh Lord our Governor, bless the leaders of our land that we may be a people at peace among ourselves and a blessing to other nations of the earth. Lord, keep this nation under Your care. To the President of the Unites States and members of the Cabinet, to the Congress, to Governors of all states, to Mayors of cities, and to all in administrative authority, grant wisdom and grace in the exercise of their duties. Give grace to Your servants Lord. To these Senators and Representatives of the State of Maine, and to those who make our laws in cities and towns give courage, wisdom, and foresight to provide for the needs of all our people and to fulfill our obligations in the community of this great nation and of all nations. And in this period of double sessions, grant them patience and stamina. Give grace to Your servants, Lord. To the judges and offices of our courts, give understanding and integrity that human rights may be safeguarded and justice served. And, finally, teach our people to rely on your strength and to accept their responsibilities to their fellow citizens that they may elect trustworthy leaders and make wise decisions for the well being of our society that we may serve You faithfully in our generation and honor Your holy name. For into Your hands, oh Lord, we put our trust. Amen.

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Doctor of the day, Francis Kleeman, M.D., Kennebunk.

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Reading of the Journal of Monday, March 27, 2000.

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Out of order and under suspension of the Rules, on motion by Senator PINGREE of Knox, the following Senate Order:

S.O. 26

ORDERED, that a message be sent to the House of Representatives proposing a Joint Convention of the two branches of the Legislature to be held in the Hall of the House at 12:45 in the afternoon for the purpose of extending to the Honorable George J. Mitchell an invitation to attend the Convention and make such communication as pleases him.

**READ** and **PASSED.**

The Chair appointed the Senator from Knox, Senator **PINGREE** to deliver the message to the House of Representatives. The Sergeant-At-Arms escorted the Senator to the House of Representatives.

Subsequently, the Senator from Knox, Senator **PINGREE** reported that she had delivered the message with which she was charged.

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Off Record Remarks

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At this point a message was received from the House of Representatives, borne by Representative SAXL of Portland informing the Senate that the House concurred with the proposition for a Convention of the two branches of the Legislature to be held in the Hall of the House at 12:45 in the afternoon for the purpose of extending to the Honorable George J. Mitchell an invitation to attend the Convention and make such communications as pleases him.

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Off Record Remarks

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**COMMUNICATIONS**

The Following Communication: S.P. 1063

**119TH MAINE LEGISLATURE**

March 27, 2000

Senator Carol A. Kontos
Representative Gary L. O'Neal
Chairpersons
Joint Standing Committee on Business and Economic Development
119th Maine Legislature
Augusta, Maine 04333

Dear Senator Kontos and Representative O'Neal:

Please be advised that Governor Angus S. King, Jr. has nominated Bruce N. Schatz of Augusta, M. Kelly Matzen of Auburn and John Murphy of Fort Kent for appointment as members of the Maine Educational Loan Authority.

Pursuant to Title 20-A, M.R.S.A. §11415, these nominations will require review by the Joint Standing Committee on Business and Economic Development and confirmation by the Senate.

Sincerely,

S/Mark W. Lawrence
President of the Senate

S/G. Steven Rowe
Speaker of the House

**READ** and **REFERRED** to the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT**.

Sent down for concurrence.

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The Following Communication: S.P. 1064

**119TH MAINE LEGISLATURE**

March 27, 2000

Senator Beverly C. Daggett
Representative John L. Tuttle, Jr.
Chairpersons
Joint Standing Committee on Legal and Veterans Affairs
119th Maine Legislature
Augusta, Maine 04333

Dear Senator Daggett and Representative Tuttle:

Please be advised that Governor Angus S. King, Jr. has nominated Joseph E. Tinkham II of South Gardiner for appointment as Adjutant General/Commissioner of Defense, Veterans and Emergency Management.

Pursuant to Title 37-B, M.R.S.A. §3, this nomination will require review by the Joint Standing Committee on Legal and Veterans Affairs and confirmation by the Senate.

Sincerely,

S/Mark W. Lawrence
President of the Senate

S/G. Steven Rowe
Speaker of the House

**READ** and **REFERRED** to the Committee on **LEGAL AND VETERANS AFFAIRS**.

Sent down for concurrence.

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The Following Communication: S.C. 590

**119TH MAINE LEGISLATURE**

February 25, 2000

Honorable George J. Mitchell
Verner, Liipfert
901 15th St., N.W.
Suite 700
Washington, D.C. 20005

Dear Senator Mitchell:

We are pleased to invite you to the Joint Convention of the 119th Maine Legislature, to be held in your honor, on March 28, 2000 at 12:45 p.m., in the House Chamber. The Joint Convention will be followed by a reception in the third floor Rotunda.

We look forward to seeing you.

Sincerely,

S/Mark W. Lawrence
President of the Senate

S/G. Steven Rowe
Speaker of the House

**READ** and **ORDERED PLACED ON FILE.**

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The Following Communication: S.C. 591

**STATE OF MAINE**
**ONE HUNDRED AND NINETEENTH LEGISLATURE**
**COMMITTEE ON JUDICIARY**

March 24, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Honorable Courtland D. Perry of Augusta, for appointment as an Active Retired Maine District Court Judge.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

| | | | |
|---|---|---|---|
| YEAS | Senators | 3 | Longley of Waldo, Benoit of Franklin, Treat of Kennebec |
| | Representatives | 9 | Thompson of Naples, Bull of Freeport, Jacobs of Turner, LaVerdiere of Wilton, Madore of Augusta, Mitchell of Vassalboro, Norbert of Portland, Schneider of Durham, Waterhouse of Bridgton |
| NAYS | | 0 | |
| ABSENT | | 1 | Rep. Plowman of Hampden |

Twelve members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Honorable Courtland D. Perry of Augusta, for appointment as an Active Retired Maine District Court Judge be confirmed.

Signed,

S/Susan W. Longley
Senate Chair

S/Richard H. Thompson
House Chair

**READ** and **ORDERED PLACED ON FILE.**

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION.**

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The Following Communication: S.C. 592

**STATE OF MAINE**
**ONE HUNDRED AND NINETEENTH LEGISLATURE**
**COMMITTEE ON JUDICIARY**

March 24, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Rick E. Lawrence of Portland, for appointment as a Maine District Court Judge

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

| | | | |
|---|---|---|---|
| YEAS | Senators | 3 | Longley of Waldo, Benoit of Franklin, Treat of Kennebec |
| | Representatives | 8 | Thompson of Naples, Bull of Freeport, Jacobs of Turner, LaVerdiere of Wilton, Madore of Augusta, Norbert of Portland, Schneider of Durham, Waterhouse of Bridgton |
| NAYS | | 0 | |
| ABSENT | | 2 | Rep. Mitchell of Vassalboro, Rep. Plowman of Hampden |

Eleven members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Rick E. Lawrence of Portland, for appointment as a Maine District Court Judge be confirmed.

Signed,

S/Susan W. Longley
Senate Chair

S/Richard H. Thompson
House Chair

**READ** and **ORDERED PLACED ON FILE.**

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION.**

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The Following Communication: S.C. 593

**STATE OF MAINE**
**ONE HUNDRED AND NINETEENTH LEGISLATURE**
**COMMITTEE ON JUDICIARY**

March 24, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of John McElwee of Caribou, for appointment as a Maine District Court Judge.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

| | | | |
|---|---|---|---|
| YEAS | Senators | 3 | Longley of Waldo, Benoit of Franklin, Treat of Kennebec |
| | Representatives | 10 | Thompson of Naples, Bull of Freeport, Jacobs of Turner, LaVerdiere of Wilton, Madore of Augusta, Mitchell of Vassalboro, Norbert of Portland, Plowman of Hampden, Schneider of Durham, Waterhouse of Bridgton |
| NAYS | | 0 | |
| ABSENT | | 0 | |

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of John McElwee of Caribou, for appointment as a Maine District Court Judge be confirmed.

Signed,

S/Susan W. Longley
Senate Chair

S/Richard H. Thompson
House Chair

**READ** and **ORDERED PLACED ON FILE.**

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION.**

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The Following Communication: S.C. 594

**STATE OF MAINE**
**ONE HUNDRED AND NINETEENTH LEGISLATURE**
**COMMITTEE ON JUDICIARY**

March 24, 2000

The Honorable Mark W. Lawrence
President of the Senate of Maine
119th Maine Legislature
State House
Augusta, Maine 04333-0003

Dear Mr. President:

In accordance with 3 M.R.S.A., Section 157, and with Joint Rule 505 of the 119th Maine Legislature, the Joint Standing Committee on Judiciary has had under consideration the nomination of Patricia Worth of Belfast, for appointment as a Maine District Court Judge.

After public hearing and discussion on this nomination, the Committee proceeded to vote on the motion to recommend to the Senate that this nomination be confirmed. The Committee Clerk called the roll with the following result:

| | | | |
|---|---|---|---|
| YEAS | Senators | 3 | Longley of Waldo, Benoit of Franklin, Treat of Kennebec |
| | Representatives | 10 | Thompson of Naples, Bull of Freeport, Jacobs of Turner, LaVerdiere of Wilton, Madore of Augusta, Mitchell of Vassalboro, Norbert of Portland, Plowman of Hampden, Schneider of Durham, Waterhouse of Bridgton |
| NAYS | | 0 | |
| ABSENT | | 0 | |

Thirteen members of the Committee having voted in the affirmative and none in the negative, it was the vote of the Committee that the nomination of Patricia Worth of Belfast, for appointment as a Maine District Court Judge be confirmed.

Signed,

S/Susan W. Longley
Senate Chair

S/Richard H. Thompson
House Chair

**READ** and **ORDERED PLACED ON FILE.**

On motion by Senator **PINGREE** of Knox, Nomination **TABLED** until Later in Today's Session, pending **CONSIDERATION.**

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**SENATE PAPERS**

Bill "An Act to Amend and Clarify the Powers and Duties of the Lake Arrowhead Community, Incorporated" (EMERGENCY)
S.P. 1061 L.D. 2655

Sponsored by Senator LIBBY of York.
Cosponsored by Representative McALEVEY of Waterboro and Senators: DAVIS of Piscataquis, GOLDTHWAIT of Hancock, PENDLETON of Cumberland, Representative: BUMPS of China.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

**REFERRED** to the Committee on **STATE AND LOCAL GOVERNMENT** and ordered printed.

Sent down for concurrence.

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Bill "An Act to Provide Affordability in New Home Construction for Maine Families" (EMERGENCY)
S.P. 1062 L.D. 2656

Sponsored by Senator LIBBY of York.
Cosponsored by Representative NASS of Acton and Senator: BENNETT of Oxford, Representative: McALEVEY of Waterboro.
Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

**REFERRED** to the Committee on **UTILITIES AND ENERGY** and ordered printed.

Sent down for concurrence.

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Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Require Motion Picture Distributors to Give Exhibitors an Equal Opportunity to Bid for the Right to Exhibit Motion Pictures"

H.P. 1285 L.D. 1846

Reported that the same **Ought Not to Pass**.

Signed:

Senators:
KONTOS of Cumberland
MacKINNON of York

Representatives:
CLOUGH of Scarborough
BOWLES of Sanford
MARVIN of Cape Elizabeth
SIROIS of Caribou
USHER of Westbrook
BOLDUC of Auburn
TRIPP of Topsham

The Minority of the same Committee on the same subject reported that the same **Ought to Pass**.

Signed:

Representatives:
MENDROS of Lewiston
O'NEAL of Limestone

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **KONTOS** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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**Divided Report**

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Penalize a Company that Does Not Submit the Report Required by Law Regarding State Assistance"

H.P. 1727 L.D. 2433

Reported that the same **Ought Not to Pass**.

Signed:

Senators:
KONTOS of Cumberland
MacKINNON of York

Representatives:
CLOUGH of Scarborough
BOWLES of Sanford
MARVIN of Cape Elizabeth
O'NEAL of Limestone
SIROIS of Caribou
USHER of Westbrook
TRIPP of Topsham
SHOREY of Calais

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-925)**.

Signed:

Representative:
BOLDUC of Auburn

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **KONTOS** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

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**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Provide for Benefits to Surviving Dependents of Employees Who Die as a Result of Work Injuries"

H.P. 1381 L.D. 1988

Reported that the same **Ought Not to Pass**.

Signed:

Senators:
DOUGLASS of Androscoggin
LaFOUNTAIN of York
MILLS of Somerset

Representatives:
DAVIS of Falmouth
MacDOUGALL of North Berwick
MACK of Standish
TREADWELL of Carmel

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-928)**.

Signed:

Representatives:
HATCH of Skowhegan
SAMSON of Jay
MATTHEWS of Winslow
GOODWIN of Pembroke

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

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**Divided Report**

The Majority of the Committee on **LABOR** on Bill "An Act to Ensure Access to Specialists for Injured Workers"
H.P. 1827 L.D. 2561

Reported that the same **Ought to Pass**.

Signed:

Senators:
DOUGLASS of Androscoggin
LaFOUNTAIN of York

Representatives:
HATCH of Skowhegan
GOODWIN of Pembroke
FRECHETTE of Biddeford
MATTHEWS of Winslow
SAMSON of Jay

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

Signed:

Senator:
MILLS of Somerset

Representatives:
TREADWELL of Carmel
DAVIS of Falmouth
MacDOUGALL of North Berwick
MACK of Standish

Comes from the House with the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Reports **READ**.

On motion by Senator **PINGREE** of Knox, **TABLED** until Later in Today's Session, pending **ACCEPTANCE OF EITHER REPORT**.

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**Divided Report**

The Majority of the Committee on **TRANSPORTATION** on Bill "An Act to Amend Weight Requirement Inequalities Between Hauling Wood Products and Hauling Other Products"
H.P. 845 L.D. 1179

Reported that the same **Ought Not to Pass**.

Signed:

Senators:
O'GARA of Cumberland
PARADIS of Aroostook

Representatives:
FISHER of Brewer
WHEELER of Eliot
LINDAHL of Northport
JABAR of Waterville
BOUFFARD of Lewiston
SAVAGE of Union

The Minority of the same Committee on the same subject reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-911)**.

Signed:

Senator:
CASSIDY of Washington

Representatives:
COLLINS of Wells
SANBORN of Alton
WHEELER of Bridgewater
CAMERON of Rumford

Comes from the House with the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-911)**.

Reports **READ**.

On motion by Senator **O'GARA** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

On motion by Senator **HARRIMAN** of Cumberland, the Senate **RECONSIDERED** whereby it **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

On motion by Senator **O'GARA** of Cumberland, **TABLED** until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

---

**Senate**

**Divided Report**

The Majority of the Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Improve the Regulation of Occupations and Professions"
S.P. 996 L.D. 2558

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-593)**.

Signed:

Senators:
KONTOS of Cumberland
MacKINNON of York

Representatives:
CLOUGH of Scarborough
BOWLES of Sanford
MARVIN of Cape Elizabeth
O'NEAL of Limestone
USHER of Westbrook
BOLDUC of Auburn
TRIPP of Topsham
SHOREY of Calais

The Minority of the same Committee on the same subject reported that the same **Ought Not to Pass**.

Signed:

Representative:
MENDROS of Lewiston

Reports **READ**.

On motion by Senator **KONTOS** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

**READ ONCE**.

Committee Amendment "A" (S-593) **READ** and **ADOPTED**.

**TOMORROW ASSIGNED FOR SECOND READING**.

---

**SECOND READERS**

The Committee on **Bills in the Second Reading** reported the following:

**House**

Bill "An Act to Enhance the Economic Security of Low-income Households with Respect to Utility Service"
H.P. 1496 L.D. 2140

(See action later today.)

Bill "An Act to Implement Recommendations Concerning Protection of Indian Archaeological Sites"
H.P. 1816 L.D. 2549

Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor (EMERGENCY)
H.P. 1852 L.D. 2590

Resolve, Regarding Legislative Review of Chapter 119: Motor Vehicle Fuel Volatility Limit, a Major Substantive Rule of the Department of Environmental Protection (EMERGENCY)
H.P. 1879 L.D. 2615

Bill "An Act Relating to the Cleanup of the Wells Waste Oil Disposal Site" (EMERGENCY)
H.P. 1898 L.D. 2639

Resolve, to Create the Commission to Study Equity in the Distribution of Gas Tax Revenues Attributable to Snowmobiles, All-terrain Vehicles and Watercraft (EMERGENCY)
H.P. 1901 L.D. 2645

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED**, in concurrence.

---

On motion by Senator **AMERO** of Cumberland, the Senate **RECONSIDERED** whereby it **PASSED TO BE ENGROSSED**, in concurrence, the following:

Bill "An Act to Enhance the Economic Security of Low-income Households with Respect to Utility Service"
H.P. 1496 L.D. 2140

(In House, March 23, 2000, **PASSED TO BE ENGROSSED**.)

(In Senate, March 23, 2000, **PASSED TO BE ENGROSSED**, in concurrence.)

On motion by Senator **AMERO** of Cumberland, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED**, in concurrence.

---

**House As Amended**

Bill "An Act to Establish the Crime of Rendering a Telephone Inoperable during a Domestic Violence Incident"
H.P. 338 L.D. 454
(C "A" H-921)

Resolve, to Establish the Maine Forest Policy Round Table Study Commission
H.P. 1400 L.D. 2005
(H "A" H-875 to C "A" H-865)

Bill "An Act to Revise the Spousal Support Statute"
H.P. 1629 L.D. 2276
(C "A" H-915)

Bill "An Act to Allow the State Police to Accept Funds from Private Entities for Services Provided"
H.P. 1743 L.D. 2449
(C "A" H-828)

Bill "An Act Regarding the Statute of Limitations for Sexual Misconduct with a Minor"
H.P. 1747 L.D. 2453
(C "A" H-914)

Bill "An Act to Provide Funding for Mental Retardation Day Services and Residential Services for Nonclass Members"
H.P. 1810 L.D. 2536
(C "A" H-906)

Bill "An Act to Implement the Recommendations of the Committee on Sawmill Biomass"
H.P. 1817 L.D. 2551
(C "A" H-899)

Resolve, to Authorize the Waldo County Commissioners to Borrow not more than $400,000 to Build a Waldo County Communications and 9-1-1 Center (EMERGENCY)
H.P. 1833 L.D. 2569
(C "A" H-909)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

---

**Senate**

Bill "An Act to Clarify Terms of Appointment to the Advisory Committee on Family Development Accounts"
S.P. 1041 L.D. 2623

Bill "An Act to Amend the Laws Regarding the Board of Licensure of Water Treatment Plant Operators"
S.P. 1060 L.D. 2654

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

---

**Senate As Amended**

Bill "An Act to Amend the Lobbyist Registration Fee Provisions"
S.P. 503 L.D. 1504
(C "B" S-582)

Bill "An Act to Establish State Death Benefits for State Police Officers Killed in the Line of Duty"
S.P. 910 L.D. 2362
(C "A" S-579)

Bill "An Act to Establish an Office of Women's Health"
S.P. 923 L.D. 2374
(C "A" S-585)

Bill "An Act to Increase Access to High-quality Jobs Through the Federal Workforce Investment Act" (EMERGENCY)
S.P. 957 L.D. 2498
(C "A" S-577)

Bill "An Act to Support Child Care Education and Services" (EMERGENCY)
S.P. 963 L.D. 2505
(C "A" S-580)

Bill "An Act to Adopt Recommendations of the Department of Human Services and the Department of Mental Health, Mental Retardation and Substance Abuse Services and the Joint Advisory Committee on Select Services for the Elderly Related to the Mental Health Service Needs of the Elderly"
S.P. 964 L.D. 2513
(C "A" S-586)

Bill "An Act to Harmonize State Financial Services Laws with Federal Law"
S.P. 1007 L.D. 2574
(C "A" S-589)

Bill "An Act to Provide Education Benefits For Maine National Guard Members" (EMERGENCY)
S.P. 1017 L.D. 2585
(C "A" S-583)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

---

Bill "An Act to Amend the Law Enforcement Officer Certification Standards"
S.P. 215 L.D. 637
(C "A" S-578)

**READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

---

Bill "An Act to Clarify Municipal Responsibility for the Maintenance of Veterans' Gravesites"
S.P. 302 L.D. 873
(C "A" S-581)

**READ A SECOND TIME**.

On motion by Senator **GOLDTHWAIT** of Hancock, **TABLED** until Later in Today's Session, pending **PASSAGE TO BE ENGROSSED AS AMENDED**.

---

Out of order and under suspension of the Rules, the Senate considered the following:

**REPORTS OF COMMITTEES**

**Senate**

**Ought to Pass As Amended**

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Create the Drive ME Wheels-to-work Program"

S.P. 588 L.D. 1668

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-595).**

Report **READ** and **ACCEPTED.**

**READ ONCE.**

Committee Amendment "A" (S-595) **READ** and **ADOPTED.**

**TOMORROW ASSIGNED FOR SECOND READING.**

---

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Promote Bone Marrow Donation"

S.P. 916 L.D. 2368

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-596).**

Report **READ** and **ACCEPTED.**

**READ ONCE.**

Committee Amendment "A" (S-596) **READ** and **ADOPTED.**

**TOMORROW ASSIGNED FOR SECOND READING.**

---

Senator PARADIS for the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act to Provide Legal Access to Marijuana for Medical Use"

S.P. 1012 L.D. 2580

Reported that the same **Ought to Pass As Amended by Committee Amendment "A" (S-597).**

Report **READ** and **ACCEPTED.**

**READ ONCE.**

Committee Amendment "A" (S-597) **READ** and **ADOPTED.**

**TOMORROW ASSIGNED FOR SECOND READING.**

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Out of order and under suspension of the Rules, the Senate considered the following:

**ORDERS**

**Joint Order**

On motion by Senator RUHLIN of Penobscot, the following Joint Order: S.P. 1065

ORDERED, the House concurring, that the Joint Standing Committee on Taxation report to the Senate, a bill relating to sales tax on vehicles leased and removed from the State and certain watercraft used in interstate commerce, clarifying the high technology investment tax credit, permitting reimbursement of motor vehicle excise tax on special mobile equipment that is qualified business property and changing the method of taxation of certain smokeless tobacco products.

**READ.**

On motion by Senator **BENNETT** of Oxford, **TABLED** until Later in Today's Session, pending motion by Senator **RUHLIN** of Penobscot to **PASS.**

---

Out of order and under suspension of the Rules, the Senate considered the following:

**ORDERS**

**Joint Order**

On motion by Senator DAGGETT of Kennebec, the following Joint Order: S.P. 1066

ORDERED, the House concurring, that the Joint Standing Committee on Legal and Veterans Affairs report out, to the Senate, a bill relating to the reporting requirements for political action committees and the flexibility of the Commission on Governmental Ethics and Election Practices to assess fines.

**READ** and **PASSED.**

Sent down for concurrence.

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Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **TRANSPORTATION** on Bill "An Act to Amend Weight Requirement Inequalities Between Hauling Wood Products and Hauling Other Products"

H.P. 845 L.D. 1179

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-911)** (5 members)

Tabled - March 28, 2000, by Senator **O'GARA** of Cumberland.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**

(In House, March 27, 2000, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-911).**)

(In Senate, March 28, 2000, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**. Subsequently, on motion by Senator **HARRIMAN** of Cumberland, **RECONSIDERED**.)

On motion by Senator **O'GARA** of Cumberland, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE.**

Sent down for concurrence.

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Off Record Remarks

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Senator **AMERO** of Cumberland was granted unanimous consent to address the Senate off the Record.

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Senator **RAND** of Cumberland was granted unanimous consent to address the Senate off the Record.

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On motion by Senator **RAND** of Cumberland, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

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**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act to Clarify Municipal Responsibility for the Maintenance of Veterans' Gravesites"

S.P. 302 L.D. 873
(C "A" S-581)

Tabled - March 28, 2000, by Senator **GOLDTHWAIT** of Hancock.

Pending - **PASSAGE TO BE ENGROSSED AS AMENDED**

(In Senate, March 28, 2000, **READ A SECOND TIME.**)

At the request of Senator **GOLDTHWAIT** of Hancock a Division was had. 18 Senators having voted in the affirmative and 4 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED.**

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

JOINT ORDER - relative to the Joint Standing Committee on Taxation reporting to the Senate, a bill relating to sales tax on vehicles leased and removed from the State and certain watercraft used in interstate commerce, clarifying the high technology investment tax credit, permitting reimbursement of motor vehicle excise tax on special mobile equipment that is qualified business property and changing the method of taxation of certain smokeless tobacco products.

S.P. 1065

Tabled - March 28, 2000, by Senator **BENNETT** of Oxford.

Pending - motion by Senator **RUHLIN** of Penobscot to **PASS**

(In Senate, March 28, 2000, on motion by Senator **RUHLIN** of Penobscot, **READ.**)

On motion by Senator **RUHLIN** of Penobscot, the Joint Order was **PASSED.**

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later (3/14/00) Assigned matter:

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act to Allow the Towns of Wells and Ogunquit to Withdraw from Their Community School Districts"

S.P. 602 L.D. 1725

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-531)** (10 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - March 14, 2000, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In Senate, March 14, 2000, Reports **READ.**)

Senator **BERUBE** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

On motion by Senator **SMALL** of Sagadahoc, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL**: Thank you Mr. President. Men and women of the Senate, this Bill, which is before us finally today, has had a long and illustrious history in the Education Committee. The Bill first had its beginnings when I first had my beginnings in the Legislature, as you know, many decades ago. It came in as a Bill sponsored by then Representative Alberta Wentworth, who had happened to represent both the towns of Wells and Ogunquit. And she had to put in a Bill that would allow the two towns to separate, because she represented the town that wanted to separate. She also represented a town that did not want to be divided. And so the Wells/Ogunquit separation Bill was debated heavily in the Legislature back in the early 1980's. And one of the provisions, the main provision, that allowed this to happen was the protection of the school district, because, obviously, for Wells to give up a huge portion of their property value and their tax base, they had to have assurances that their school was going to be protected, safeguarded, kept in the manner that it was at the time. So, the Legislation formed a CSD and part of that funding formula with the CSD was to base it on valuation just as if the town had never been divided. Just as our single unit towns are currently paying for their schools. So the CSD was formed. It wasn't the very next session before there was Legislation that came in that tried to alter that contract between the two towns. And I think practically every session since then we have had some Legislation to come in. The Education Committee has, until this time, always rejected these Bills to change the contract between the two towns for their school district. What has happened in this case is Ogunquit's mill rate has stayed the same as Wells, which was set out in law, but their number of pupils have declined. And apparently this isn't something they anticipated 20 years ago. So, their cost per pupil has risen, and some might say it has risen dramatically over the last number of years. But their mill rate has remained the same. The mill rate, which is what we all use in the Legislature to determine equity. So, the Bill came in and the original Bill would have allowed Ogunquit to separate from the CSD. It has to be done by the Legislature, because this was created by the Legislature. Had that Bill gone through, Ogunquit's mill rate for education would have been lowered to two mills. And I don't think there is a person in here that wouldn't love to have a two mill education rate for any one of their towns. It would have increased Wells' mill rate higher enough so that they would be receivers of general purpose aid. So all of you that rely on general purpose aid to just provide basic subsistence for your schools would have seen an entity now taking $300,000 of general purpose aid from all of our schools in order to provide another town with a two mill education rate. Obviously that was not acceptable to the Education Committee. So, we put this out to, not a study, but a mediator. So a mediator was brought in to meet with both of the towns and they met over the summer and reported back. And the mediator's answer to this was to not use full valuation. The mediator's and the committee's report was to go to over three years to a 66% valuation and 33% per pupil. Now per pupil favors the high valuation towns. And for those of you who may have a SAD, you'll know that this is a real balancing act when you're deciding on how to fund a SAD, whether to go per pupil or valuation. Most are done by valuation, but there are various compromises that are worked out. Some might be full per pupil. Some might be 50/50. But that's decided before the SAD is formed. This was decided after the CSD was formed by a mediator. And when we asked the mediator, when I asked the mediator, did you consult with the Department of Education to determine what would be equitable or how we fund schools? They said no. I said did you look to see what is considered equity for education? No, that was not our charge. They looked at per pupil costs as a determination of equity and fairness, not at mill rates. That's totally contrary to how we deal with that in the Education Committee and I think as we deal with it as a Legislature. I, myself, sometimes challenge the mill rate argument because I have high valuations and sometimes an equal mill rate might mean my taxpayers pay a lot more. But nevertheless, we might tweak it a little bit, we might tinker a little bit, but the deciding line in our Committee is always, what is the mill rate? What are the towns people having to pay to support education. This law completely goes against that principle and the department, well they didn't take a stand, we did ask them what they thought about that and they said I think it sets a dangerous precedent. What we are doing with this is passing funding laws based on a vacuum situation. We are not looking at what we do for all our districts. We're looking at one area that has come back to us repeatedly with a problem and, frankly, someone on the Committee just threw their hands up and said, I don't want to deal with this anymore. Let's try and fix it. Well, we have not fixed it. We've lessened the tax burden on one community, but we've increased it on another. Since this vote, we have had a number of other Bills come before us that were similar situations. An SAD that didn't like their cost sharing formula. Some schools that said it's really not fair because we have additional costs because we're on an island and we have to go to the mainland. And our Committee has looked at the mill rate that those communities pay to decide whether there was really a problem and then we decided that this was not an area that we wanted to get into where we're piece by piece looking at individual school district's problems and then making a political decision about equity. I want some of you who live in communities such as mine, some of you might have a community that's pretty similar throughout, but some of you might have a town or district where you have a portion of that is very high valuation. I have one of those towns of Phippsburg. Happen to have a summer home there. And in Phippsburg you have the main portion of the community where many of the residents live and then you have the branches, the peninsulas, where you have a lot of summer residents and very few year around students. Now there would be nothing better for my tax pocketbook then if my community of Popham Beach separated from Phippsburg and said we'll tuition the students that we have or we'll pay you on a per pupil basis, because my taxes will probably go down from $2500 to about $300 because we have very few year round students on that peninsula. And that the same thing could be said for a Biddeford, Biddeford Pool situation or any of your other communities where you might have a branch of your community where it's very high valuation, very few students. And those areas are paying $30, $40, $50 thousand per student. I bet at Popham Beach, we're over $60 thousand per student because we have so few students. The difference is that that is one town and we respect the fact that we are part of that community and, despite the fact that very few from our area are going to use those schools, we still have an obligation to fund that. In my mind, Wells/Ogunquit should still be treated as one town

because that was the agreement that was made when we allowed them to separate. That that school district would not be harmed. It would be treated as one school district, one community. And so that's why the tax rates still reflect an equalized mill rate, but perhaps a very different allocation per pupil. That's the same in any one of your communities that has a lake, that maybe has some ocean front property, that has a new area that is built up and has high property values. You will find those disparities in your own communities. If we support this, we are basically opening the doors for any community, any SAD, that has a problem to come in and say, look at these other principles of equity. Not mill rate, not how much we're paying on our evaluation and the ability to raise that. But look at how much we're paying per student or look at how much this area is paying over that area. And, believe me, we will turn this funding formula on its head. So, I hope you will reject the Ought to Pass report so that we can go ahead and except the Ought Not to Pass report and allow the communities to try and work this out themselves. But I guarantee if we pass this, we are going to see hoards of other Bills coming in that are going to try and correct inequities that they see within their own districts, within their own communities. And I think that it's going to set a very, very bad precedent on how we fund education. Thank you very much.

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The President requested the Sergeant-At-Arms escort the Senator from Knox, Senator **PINGREE** to the rostrum where she assumed the duties as President Pro Tem.

The President took a seat on the floor.

The Senate called to order by President Pro Tem **CHELLIE PINGREE** of Knox County.

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Off Record Remarks

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**THE PRESIDENT PRO TEM**: The Chair recognizes the Senator from York, Senator MacKinnon.

Senator **MACKINNON:** Thank you Madam President. I rise today to ask your support of the majority to go onto the minority report. I do this as a Senator from that district. I do that as a parent of students that have gone through the Sanford school system, which was effected by the Wells/Ogunquit decision in 1980. As principal of Sanford High School, we receive students from both communities into our vocational program. If you look at the history of this, and this has been very eloquently spoken by Senator Small from Sagadahoc, that in 1980 the majority of the people of Wells voted to allow the people of Ogunquit to separate as long as the agreement was followed. Key point in 1980, they agreed by a majority vote that the people of Wells to allow them to separate, to form their own village, their own identity, with the stipulation that education and some of the bills be paid. As we have gone down the road, this probably right now is a discrepancy of a ½% in the mill rate. As you know, the people here have complained year after year of the property tax, the mill rates that we have to pay. If you look back and say things have changed. Yes. In 1940 we had maybe 80% of our budgets in the towns going to schools. It's probably down near 50/50, 55/45 now. Things are changing. The thing that changed in Ogunquit, unfortunately, the number of students went down. But their obligation is still there. If we look and think about our own communities, many of us do not use the Fire Department, we do not use the Police Department, but we still pay our taxes to make sure that we have that as an obligation within our community and our civic responsibility. We have those obligations in education too. Unfortunately, everything is based on property tax. If you look at property tax and property valuation as currency, unfortunately the more you have, the more you have to pay. The same thing occurs with property valuations. If your property is valued more, which in some cases Ogunquit property is valued high, they may pay more. But if you look at the effort behind that towards education, about a half mill rate difference I think it is. If we change this around, we put more of a burden on the people who in the majority allowed them to go. While this is a noble cause and a noble effort and we think of that by saying isn't that nice that we can give them tax relief. In essence, we are putting more of a tax burden on other people. If it does occur and they become a receiving town, tell some of the other communities that you've taken value high communities and given them money when you're taking it away from people who are really struggling to go. I represent the community of Wells, but to receive money compared to some of the other areas, I don't think it's right. I'm not sure that this Bill is right for the purposes that it's written. To allow these people 66 to 33 to go back. If we look at these unintended consequences of other places coming and asking to be relieved of their responsibilities and obligations, what will that do to our tax structure and our education system? We're here looking at an issue of which a community can afford to pay. Yes, it's a high rate. Yes, it is a place which, at this particular time, has very few students. But that was a decision the fathers of that community made when they wished to withdraw from Wells and form. They have done that. You're saying it's all stacked against them. They gave up some of those rights to negotiate at that particular time. I would hope that we would look and say the rights were given. If you want to go back to majority vote. Of course, they don't want to do that. Also not mentioned in the report that was given, because when you look to mediation you're looking to compromise, there were ideas given out by Town of Wells that said you have to build a new elementary school. If we do that, we'll pay the whole cost. Don't worry about that. To me that takes a little bit of a load off Ogunquit at that particular time. For these reasons, and not boring you, and I know you have heard a lot about this issue, I strongly urge you to vote down the majority report to go on and accept the minority report. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes Senator from York, Senator Lawrence.

Senator **LAWRENCE:** Thank you Madam President. Men and women of the Senate, I appreciate the remarks of the two prior speakers. This has been an issue that has been in the Legislature for a long time and I, like the good Senator from York, Senator MacKinnon, used to represent the Town of Wells. At one time both Wells and Ogunquit were within my Senate district when I first ran. And I can tell you, both communities have a deep concern for education and a deep concern for the quality of education of their students. And this is not a debate about the quality of education of the students in the district. This is a question of how best to fund that. The school district will not be

harmed by this proposal. It does not effect GPA that comes from the State. It is essentially on the relationship between the towns to each other. If anything, this will strengthen the school district because right now you have a relationship where one community feels like they don't have any say financially. They are putting a tremendous amount of financial investment in this district and it's effecting the ability of the town to operate. A couple of points I'll bring out about this Legislation. First of all, this issue has been in the Legislature many, many years. And the Education Committee, this last session, said the best thing for us to do, because we cannot reach a resolution on this, is to send it out to a mediator. This was a suggestion of the Education Committee. The expectation was that the mediator could find a resolution that the Education Committee could not find that was not in the political process. The town sat down and negotiated prior to mediation, and they have for years, and could not come back with an agreement. And it's not surprising, because when you have an agreement that works all in one town's favor, there is no incentive on one town to compromise. There's absolutely no incentive at all for that community to compromise. So they sent it out to a mediator and the mediator came back and found, actually, that it should be split 67/33 between valuation and pupil representation. But also they should have the right to withdraw. This is not that report. That was taken out by the Education Committee and solely at 67% of valuation, 33% number of pupils. And before there are dire predictions of this happening every place else. This is not going to happen every place else. This is a very unique circumstance. The creation of Ogunquit was a very unique circumstance. An act of this Legislature. You don't have other CSDs like this that are this type of creation of the Legislature. But I just want to point out to you that other CSDs in the State, and CSDs are different than SADs. In other CSDs in the State, only two others go by property valuation, and they aren't coastal communities. Southern Aroostook is one of them. Most of the coastal communities, Boothbay Harbor goes 100% by number of pupils. In fact the vast majority, the overwhelming majority, of consolidated school districts go 100% by pupils. If my count is right, there are 9 of them that go 100% by pupils. One other school district, a consolidated school district, Mount Desert Island, goes two-thirds by valuation and one-third by population. And there is also a Camden consolidated school district that goes 50% by valuation, 50% by pupils. So this is not unusual. What has happened here is really a change of circumstances from what anyone perceived when this came to the Legislature. You have two communities that are both coastal communities, both resort communities. This is not one coastal community versus and inland community. These are both coastal communities with high valuation property. Ogunquit has the Ogunquit area, Perkins Cove. Wells has Moody Beach, Lot Home Beach, Wells Beach, and the whole stretch of the coast. The situation that has changed is the make-up of the population. The population in Ogunquit has aged and there are not the number of pupils. The result is that Wells pays $5683 per pupil. Ogunquit pays $52,000 per pupil. Ten times what is paid in Wells. And that is just plain unfair. You cannot have a consolidated school district that's based on an unfair principle and expect it to operate well. That was the position the mediator took, that you have to interject an element of fairness in this to have cooperation between the communities and the school district and have support from both communities for the school district. I'd ask you to support this report which is a ten to three report. And it's a good size majority of the Education Committee that said that it's time to amend this consolidation school district to make it fairer for the communities involved. Thank you.

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Off Record Remarks

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**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Sagadahoc, Senator Small,

Senator **SMALL:** Thank you Madam President. Men and women of the Senate, I just wanted to make a clarification in our comparison of SADs. All the other SADs were entered into by mutual agreement of those communities. They sat down, they negotiated how they were going to assess the funding formula within that community. What we are doing here is taking a mediator who favored one side and we are supplanting their original agreement with one that is a political, legislative agreement. And, again, I think what is really unfair is that circumstances change. Yes, they could have changed the other way and perhaps Wells would not have come out as favorably. But I would not be supporting their position to alter the agreement either. I just want you to hear the questions that they voted on in 1980. The text of the question that these people went out and voted on. This is the contract between those communities. The ballot question voted on by Ogunquit, shall the Ogunquit Village Cooperation be separated from the Town of Wells as an incorporated town, and shall the Town of Ogunquit join a community school district with the Town of Wells for grades kindergarten to twelve to be known as the Wells/Ogunquit Community School District to share 100% of the costs based on each town's valuation. It didn't say for as long as things remain good. Didn't say as long as we are sending the same amount of children. They made a commitment, their fair share, as if they remained one town. Concurrently, Wells voted, shall the Town of Wells join a community school district with the Town of Ogunquit for grades kindergarten through twelve to be known as the Wells/Ogunquit Community School District to share 100% of the costs based upon each town's valuation. That is what they are doing now, ladies and gentlemen of the Senate. That is what they agreed to do back then. And, frankly, if we could turn this whole thing back and say let's vote the separation again, then I would think it would be fair. Do you want to change the school district formula? Then let's change the town separation. Let's let them vote. If you're going to let Ogunquit change the deal, let's let Wells go to the table and change their side of the bargain, because Wells gave up a lot to go into this. They gave up all this valuation. And the one thing that made them vote for that, to gut their agreement, was that their school district would be protected, that their valuation wouldn't go up because they allowed part of their town, their community, to separate. And they made the agreement. To me, this is a binding contract and maybe it's the fact that I was here when that happened that I happen to take it very seriously and hold it to be sacred. But I just can't see how this Legislature can take an agreement by two towns and come back and say, frankly, we are tired of hearing about the issue and we're going to allow another town to get the better of that contract. And, as I said, the Committee did go along with the mediator. I did not agree with that because I thought that there would be problems. I was right. And I have to say that I think the Committee's expectations was that the mediator was at least

going to use the same principles that we use when we are determining what's fair for your district and what's fair for my district when we are dividing up the funding amounts, setting the funding formula. And they, by their own admittance, did not do that. They looked at it in a vacuum. They looked at it without any eye to what is good educational policy. And for those reasons, I hope we reject this motion. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Murray.

Senator **MURRAY:** Thank you Madam President. Men and women of the Senate, I rise today as a member of the Education Committee to ask your support of the majority report. And I do so as, I guess, an outsider to the particular region that is most affected by this issue. I know the reason we're presented with this over and over, this is an unique creature of statute. And believe me, as a member of the Education Committee this time, I wish nothing more than we didn't have this unique role in the Legislature. But, we do and we do for the history that the good Senator from Sagadahoc has outlined to you. It was part of the genesis of the separation of those communities and that is part of the Legislative private and special law that leaves us here today with having to wrestle with this issue. So that's the given we start with. With that, where do we go? Well, we down the history of the past 20 odd plus years into each year where this problem that has generated itself, gets dumped on our lap to solve. And I certainly don't feel Solomonistic enough to come up with a great solution that satisfies everyone. And what I think we tried to do last time was somewhat unique and creative by trying to separate it from our own political setting and bring in the assistance of a mediator to try to help these two communities, because that's what mediation is. It's trying to have an individual sit and have the two parties most directly involved come up with a solution. And, as you might expect, there was not a solution that both parties were willing to sign off on . But what that process did, and what part of mediation is meant to do, although I didn't sit in on the individual settings, I assume what went on, was that give and take negotiation between the parties to try and reach some resolution. When that wasn't successful, the mediator was asked to come up with some facts or fact finding as to what that person thought the best solution should be. And I, quite frankly, don't have a better solution than what was proposed. as the product of that mediation process. And that process, that conclusion, were basically two. The one conclusion that's presented to you as part of this Committee Amendment is to carve out one-third, rather than having it 100% based on property valuation. One-third will now be based on student population. 66% will still be based on property valuation. And where the Committee parted ways with the mediator's conclusion was that we do not think that Ogunquit ought to have the ability to separate five years down the road. So what we did was said look again now that we are presented with this situation. Let's try it. Here's the solution that I think is reasonable. Hopefully, this will give those two communities an opportunity to act in a new way that will be fair, that may create a solution. And I only hope, more than anything else, it will mean that they won't be back again next year to have us act as the referee. That's the role we, unfortunately, have been placed in and that's the unique role with these particular two communities. That's why I don't fear what has been suggested would be the case of every other community in the State coming forward. This is a very unique situation. That's why we're presented with it. That's why we have to deal with it. If we don't deal with in the way the majority of the Community suggests this time, I can guarantee you, it won't be the last time we see it. So I hope you'll follow the lead of ten of the members of the Committee. Give this an opportunity to succeed and we hope, and I suspect, the members of both of those communities will also hope that after a few year's experience, they will both be satisfied with the way it works. We can guarantee you, if we don't pass it this time, there's half of that community's school district that won't be satisfied, which means they'll be back. So let's give this a try. And I urge you to support the majority.

**THE PRESIDENT PRO TEM**: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Berube to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#291)**

YEAS: Senators: BERUBE, CAREY, CATHCART, DAGGETT, DOUGLASS, GOLDTHWAIT, KILKELLY, KONTOS, LAFOUNTAIN, LAWRENCE, MICHAUD, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, RAND, RUHLIN, TREAT, THE PRESIDENT PRO-TEM - CHELLIE PINGREE

NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, CASSIDY, DAVIS, FERGUSON, HARRIMAN, KIEFFER, LIBBY, LONGLEY, MACKINNON, MILLS, MITCHELL, SMALL

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, the motion by Senator **BERUBE** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED.**

**READ ONCE.**

Committee Amendment "A" (S-531) **READ** and **ADOPTED,** in concurrence.

**TOMORROW ASSIGNED FOR SECOND READING.**

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The President Pro Tem requested the Sergeant-At-Arms escort the Senator from York, Senator **LAWRENCE** to the rostrum where he resumed his duties as President.

The Sergeant-At-Arms escorted the Senator from Knox, Senator **PINGREE** to her seat on the floor.

Senate called to order by the President.

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Off Record Remarks

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The Chair laid before the Senate the following Tabled and Specially (3/27/00) Assigned matter:

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act Regarding Wrongful Death Actions"

H.P. 480 L.D. 687

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-871)** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - March 23, 2000, by Senator **LONGLEY** of Waldo.

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence

(In House, March 22, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-871).**)

(In Senate, March 23, 2000, Reports **READ.**)

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate. On this pending motion, I would ask you, respectfully, to vote the red button, not the green button. The red button is for responsible government on this point and red is right. The green button will represent greenbacks, higher court judgments, higher attorneys' fees, and higher insurance premiums. For the people of the State of Maine, that includes individuals, businesses, state and local government. And I wish to share with you my reasons for saying so. As we all understand that wrongful death occurs when either negligence or an intentional act causes the death of a person. Right now, under Maine law, the right of recovery is in three groups: economic, non-economic, punitive. The economic loss is the loss of future income, medical expenses, and funeral costs. This Bill does not take up economic costs. It takes up the non-economic. The loss of companionship and comfort, now under Maine law, is capped at $150,000 by the Legislature. The last category, punitive, created right by the Legislature, is capped at $75,000, which again this Bill does not reach, but which is the right of recovery when the act that takes the life of a person is so egregious as to be uncaring of the value of life. Now come back to what the Bill is about, the $150,000 cap on the right of recovery for the loss of companionship. Two reasons were given to the Judiciary Committee for removing the cap. Parents Against Tired Truckers came in and said how dare you Legislature determine what a life is worth and put this cap at $150,000? Respectfully to that argument, it is irrelevant. What a life is worth is already covered by the economic situation, which isn't capped. There is no cap in the law on what a life is worth. This non-economic situation has nothing to do with worth of the person, loss of income, and expenses. The other reason given to taking off the cap was advanced by the lawyers. The Maine Bar Association and the Maine Trial Lawyers Group came in and said take off the cap. How dare the Legislature interfere this way, that this cap is government interference. I think that's unfortunate to take that position, because what the lawyers are saying to us is that it's good government to have created this right of recovery 33 years ago. That's good government. But to say as to the range of recovery in the law, that's government interference. I did not buy the argument. I do not buy it today. This right of recovery, to give you a brief history, was created 33 years ago by this Legislature. It was not created by judges, jurors, or lawyers. We created the right of recovery and we set, at the same time, a range of recovery. They go hand in hand. The right and the range of recovery. It led stability to these cases and, Lord knows, when you pick the paper up and look at a court case today where juries are, they're off the wall. The sky is the limit. And that will have dire consequences if this cap is removed. That I will cover shortly. This cap creates a benchmark with stability, a benchmark for settlement in these cases. In 1967, the Legislature put in the books this right of recovery. It was then $5,000 and only allowed if a parent lost a child in a wrongful death case. Don't tell me, Mr. President and members of the Senate, that at that point in 1967 that the Legislature was telling us the value of the loss of a child was $5,000. If they are, get a life. That's not what this right of recovery is all about, to try and price the loss. The loss is priceless. Then in 1969, a few years later, the cap was increased to $10,000, still for the loss of a child. In 1967, we expanded the right to the heirs of the deceased. I hope that you will see from the history that we are not incompetent in this area, as a Legislature, and we are not inconsiderate. In 1981, we put the cap at $50,000, reason given to do so. 1989, $75,000 and, in 1996, we put it at $150,000, where it is today. I want to suggest to you, and to me this the controlling point as far as I am concerned, this right of recovery and range of recovery are put in the law as a matter of public policy. This Legislature recognized that in a wrongful death case, there was no right of recovery for the loss of companionship of the person. We put it in the law. The lawyers didn't. The judges didn't and jurors didn't. We did. We created this right and we capped it. It's been capped ever since. If you lose a spouse and I hand you a piece of paper and ask you to write down the amount of your loss and you can't do it, I say good for you. Your relationship is more family then financial. Good for you. If you lose a child, I hand you a piece of paper, ask you to value your loss, and you can't do it, good for you. Your relationship is more paternal than peculiar, more paternal than mercenary. That's not the reason why we have the right of recovery and the cap. We are not incompetent. We are not inconsiderate. Taking a look at other States in New England, to have some guidance but not necessarily to tell us what to do, Vermont only allows recovery for the loss of a child. There is no right of recovery in that State for the loss of a spouse. Rhode Island prevents a parent losing a child from getting a penny if the parent has not paid child support for six months. See what this right is all about. Not trying to fix, decide to the buck or penny, the loss but to allow something. In New Hampshire, right next door, the cap is $150,000 for the loss of a spouse. $75,000, half, if a child loses a parent or parent loses a child. We do better. We do better. We're more considerate. We're not incompetent in this area. I've told you in conclusion, Mr. President, that the red button is right. It's for responsible government. The green button is for greenbacks. And let me show you, finally, what's going to happen to the insurance situation. There will be higher money judgments, higher lawyers' fees, and higher insurance premiums. The fiscal note on this Bill shows what is going to happen to the State. Right now under Maine Law, there is a cap for this type case,

$400,000. If you take off the $150,000 cap in wrongful death and move this up to the limit of $400,000, the State of Maine will pay additional insurance of $143,750 yearly. Now when we take this off and we don't have any life cap for our citizens and our businesses, and local government, the sky is the limit. Could you imagine what's going to happen to the insurance situation for our citizens? It does not have to happen, Mr. President. In conclusion, finally, in 1999 the top ten jury award have these two for wrongful death, $296 million in one case and $907 million in the other case. I ask you, please, to consider whether you want to take off the law, part of what was enacted 33 years ago. To me, it's hand in hand. The right of recovery, the range of recovery. They go together. They're inseparable. Now, if in fact, some of you will feel as I do, sensitive in this area, about what should happen when someone acts in a negligent way, that's gross negligence, or intentionally takes the life of a loved one and to not be punished for it, raise the $75,000 cap. That makes sense to me. Punish the person for the wrongful act that caused you to loose a loved one. But to take this cap off is not good government. Respectfully, thank you.

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Off Record Remarks

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**THE PRESIDENT:** The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President. Everyone, I'll be brief. I suspect you all already know how you are going to vote. But I would like to point out that we have one of the lowest levels in the nation. And if you think, if it's your spouse or if it's your child, if you think they're worth no more, when you lose them, than $150,000 then you want to vote red. You're basically saying my loved one isn't worth than a penny more than $150,000. So go ahead and vote red, but that's the message that you are sending. Secondly, if you think government should stand in the way and say we think we're the best referees here. We think politicians know best as opposed to Maine jurors serving on Maine juries, understanding when a Maine family comes in and the grief that they are going through and the fact that we are not a wealthy State or the fact that many defendants might not be wealthy. If you don't want to trust Maine jurors to make the reasonable decision, also vote red. However, if you think a loved one who dies is worth more than $150,000 and if you think we can trust Maine jurors to come up with reasonable amounts, and so far, we haven't one example that they haven't, If you want to help Maine families get reasonable recovery, and you want to treat Maine jurors as though they can do their jobs reasonably, then vote green.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Mr. President, ladies and gentlemen of the Senate. I rise because this is an issue of justice, money, and common sense. We use our jury system to take advantage of the common sense of jurors who are in a position to evaluate the facts of every case. We need to remember that that common sense is, above all, what we value in our jury system. All the arguments I've heard about voting against passage are arguments about money. They haven't taken into account justice. If you believe in justice, I think you will be voting green to pass this Bill. The reason is that our civil justice system has a component of recognizing when an individual needs to suffer some economic damage. And that situation can occur when there is a wrongful death. We should leave it up to the common sense of our jurors to resolve all those issues. Again, I tell you this is about justice, money, and common sense. I think that justice and common sense need to prevail. Thank you. I hope you will support the motion.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator LaFountain.

Senator **LAFOUNTAIN:** Thank you Mr. President. Men and women of the Senate, the Senator from Franklin, Senator Benoit, did a good job explaining to you the history of the cap on wrongful death. From 1891 to 1965, there was no such claim allowed in the State of Maine. It was 1967, as he indicated, that we allowed a $5,000 cap. The cap then increased to $10,000, then to $50,000 and, then to $75,000 and in 1995, as a result of a Bill that I sponsored while on the Judiciary Committee, the cap went to $150,000. The actual Bill was to eliminate the cap, but, by consensus, we agreed to raise the cap. The problem I have with the cap, in this situation, is that there is no rational basis for $150,000 or for any amount of money. Can anyone explain to me why $150,000 and is an adequate amount? What does that represent? I support eliminating the cap for basically four policy reasons. I agree with the good Senator from Waldo, Senator Longley, that the damages should be awarded on a case by case basis. We should also be allowing a judge or jury to decide, based on those facts. We, as Legislators, sit here as Legislators, not as jurists. We are not hearing the facts, we're not hearing the situation, we're not seeing the victims. Therefore, let the jury system or the judge system decide what is appropriate. I also believe that the estate of a decedent should be treated similar to that of an injured survivor. For some reason, we neglect to treat them in a similar fashion. And finally, when I was in law school, the one give me on the bar exam dealt with an issue called subsequent remedial measures. It comes from the rule of evidence. If I am not mistaking, Maine differed at that time from the federal system. A few years ago, I think, we abolished our view on subsequent remedial measures and we now parallel the federal. And what Maine said for years was that if you were injured on someone's property and that person then went and they fixed their property, you could use that, as the plaintiff, in the court of law to say hey look, those stairs were defective, he fixed them the next day. You can use that in your case. We agreed, for policy reasons, that that was not a good idea. We believed that we should be encouraging people to make their property safe. Likewise, by increasing the cap, what we are doing here is encouraging many people throughout the State, homeowners, automobile owners, and insurance companies, to promote safety on Maine roads and Maine homes. And finally, there has been a suggestion that we would see an increase in premiums as a result of an increase in the cap from $150,000 to a complete elimination or to a higher cap. However, as I indicated, I served on Judiciary when the cap went from $75,000 to $150,000. I have seen no evidence to suggest from anyone that there has been actual increase in premiums. If someone could share that information with me, I would be greatly appreciative. Thank you.

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Off Record Remarks

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**THE PRESIDENT:** The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much, Mr. President. Ladies and gentlemen of the Senate, wrongful death is something that I know a little about. In 1989, my mother was struck by a vehicle and killed. At that particular time, the wrongful death cap was $50,000. The driver was distracted. My mother was crossing the street. He ran into her and killed her instantly. It was tragic thing. I was aware of the wrongful death statute. I knew it was $50,000 and it wasn't to long before I was contacted by an insurance carrier and he offered to settle for $20,000. I told him, in a forthright manner, that the driver of the vehicle was at fault and I was aware that the cap was $50,000 and I demanded that they pay $50,000. Now if the cap would have been $150,000, I would have demanded $150,000. If the cap had been lifted, I would have demanded $1 million. But in any of them, to go on with my story, I informed them that I was gong to contact my attorney, which I did. We hired an investigator and the driver admitted that he was distracted. My attorney wrote a letter to the insurance folks and we did agree to settle for the $50,000. The deal with the attorney was that he was to get one-third. I had already negotiated the $20,000, so that was off the table. $30,000 was on the table. He received $10,000 and the family received $20,000. And I want to tell you, I've had people contact me in regards to this Bill and every one of them happened to be attorneys and it is about money. There is not very much justice. Nothing in the world would have brought my mother back. No amount of money. But, nevertheless, if there was money out there and there was an opportunity to get it, I was going to take advantage of it on behalf of the family. I was the administrator of the estate. And I would pursue that avenue today if the cap was lifted. If the cap isn't high enough at $150,000, for goodness sakes, let's raise it up to a reasonable amount. But you can go in and persuade a jury. A clever attorney can and get an untold amount of money like my good seat mate, Senator Benoit, said. $900 million. That wouldn't bring my mother back. Nothing would. But for goodness sakes, let's use some common sense here and vote against this prevailing motion and go on and accept the minority report. And I thank you very much for your indulgence.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President. May it please the Senate, just a few remarks to respond to those comments made by others. The good Senator from York, Senator LaFountain, said please show me the numbers. Well, I tried, in pointing out the fiscal note, to show you that it is going to cost over $147,000 a year for the State itself in additional insurance premiums if this law is enacted. Now please understand from that I haven't been able to go out and find out individually on a case-by-case basis what's going to happen to insurance. But one thing I think we know. The insurance industry is not going to swallow the cost out of the goodness of their profit beating hearts. And I'll rest my case on the numbers with that. I've heard something commented on shortly here about the justice system. The justice system did not create this right. Give us some break in here. We created this right, right here. And we put on it a range of recovery. They go together. Now please give yourself some credit as a Body today. Looking back historically, we created the right. Judges didn't, lawyers didn't, neither did juries. We did. Stay in the picture please. Let me ask you again about the business of letting juries decide it. If you can't price the loss of your spouse or your child, how can a person in a black robe do it or strange jurors do it, if you can't do it? How are they going to do it? And don't you see that's the reason why we have the law on the books and as a matter of public policy, a cap. Nobody can do it. We try, as a matter of public policy, to do it. This law is opposed by the Maine Chapter and Business Alliance, the National Federation of Independent Business of Maine, the Maine Medical Association, the Maine Osteopathic Association, the Maine Merchants Association, the Maine Pulp and Paper Association, the Maine Motor Transport Association, the Maine Hospital Association, the Maine Forest Products Council, the Maine Grocers Association, and the Associated Constructors of Maine. I ask you, please, in all good common sense and good government, the red button is right. The red button is responsible. The green button is money and greenbacks, and this is a bigger issue. We all know it. It's a bigger issue than that. Thank you Mr. President.

The Chair ordered a Division.

On motion by Senator **BENNETT** of Oxford, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

On motion by Senator **RAND** of Cumberland, **TABLED** until Later in Today's Session, pending motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence. (Roll Call Ordered)

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On motion by Senator **PINGREE** of Knox, **RECESSED** until 12:40 p.m..

After Recess

Senate called to order by the President.

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Off Record Remarks

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At this point, the Senate retired to the Hall of the House, where a Joint Convention was formed.

After Convention

In Senate Chamber

Senate called to order by the President

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Off Record Remarks

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On motion by Senator **PINGREE** of Knox, **ADJOURNED**, until Wednesday, March 29, 2000, at 9:00 in the morning.